

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DONALD L. EATON and DEPARTMENT OF TRANSPORTATION,
FEDERAL AVIATION ADMINISTRATION, Los Angeles, Calif.

*Docket No. 96-1431; Submitted on the Record;
Issued March 26, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has established that he developed an emotional condition in the performance of duty on October 26, 1995, causally related to factors of his federal employment.

On November 8, 1995 appellant, then a 59-year-old electronics technician, filed a claim alleging that on October 26, 1995 he developed weakness and dizziness which necessitated that he seek medical care, after having a highly intense and angry telephone conversation while in the performance of duty. A witness stated that appellant became quite upset due to a telephone conversation. Appellant's supervisor controverted appellant's claim noting that he attempted to pass on some field office administrative items to appellant over the telephone in a calm rational manner when appellant became irate, at which time the conversation was terminated.

In an October 31, 1995 statement, appellant claimed that on the morning of the telephone call appellant's supervisor discussed new personnel evaluation forms/procedures with him and stated that he had cost the agency many extra dollars because the of the procedures used on a specific repair. Appellant stated that his supervisor stated that spare parts had to be specially ordered because appellant failed to communicate to the other technicians that such spare parts were already on the premises. Appellant claimed that the supervisor told him that now other technicians would have to verify the status of all equipment before appellant could submit a requisition for replacement. Appellant also indicated that they discussed use of leave procedures. Appellant stated that on that afternoon his supervisor, Mr. Bischoff, called him on the telephone and wanted to talk about three items. Appellant stated that Mr. Bischoff stated that he had had a hard time locating appellant so that, in the future, appellant should let everyone know where he would be; that appellant had been late for work; and that appellant needed to coordinate the use of vehicles with others before he left the office. Appellant claimed that he was very upset by this discussion and had to leave the employing establishment, that the next day he was still upset and had to take medication and that afterwards he was involved in a motor vehicle accident because he ran a red light.

By decision dated December 28, 1995, the Office of Workers' Compensation Programs rejected appellant's claim finding that he failed to establish that he sustained an emotional condition in the performance of duty. The Office found that discussions regarding leave usage and performance or personnel matters were not compensable under the Federal Employees' Compensation Act, absent evidence of supervisory error or abuse.

By letter dated February 1, 1996, appellant requested reconsideration and alleged that the same individuals who had caused him considerable damage in previous claims were continuing their attack on him "in a covert manner." He provided 10 pages of medical evidence related to the October 27, 1995 automobile accident and claimed that the morning discussion on October 26, 1995 was of no concern to him. Appellant stated that after the telephone confrontation a letter was published. He also alleged that Mr. McGregor wrote the letter for Mr. Bischoff's signature at the field office.

By decision dated February 16, 1996, the Office denied appellant's application for a merit review of his case finding that the evidence submitted in support of the application was irrelevant and immaterial and not sufficient to warrant a merit review. The Office explained that it had already determined that appellant's telephone conversation was not in the performance of duty, as it related to personnel and performance issues and noted that he failed to provide new arguments or evidence to bring it within the performance of duty.

The Board finds that appellant has failed to establish that he sustained an emotional condition as manifested by weakness and dizziness requiring that he seek medical care on October 26, 1995 in the performance of duty, causally related to factors of his federal employment.

To establish appellant's claim that he has sustained an emotional condition in the performance of duty, appellant must submit the following: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to his condition; (2) rationalized medical evidence establishing that he has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his emotional condition.¹ Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. Such an opinion of the physician must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by appellant.²

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of

¹ See *Donna Faye Cardwell*, 41 ECAB 730 (1990).

² See *Martha L. Watson*, 46 ECAB 407 (1995); *Donna Faye Cardwell*, *supra* note 1.

workers' compensation. These injuries occur in the course of employment and have some kind of causal connection with it but are not covered because they do not arise out of the employment. Distinctions exist as to the type of situations giving rise to an emotional condition which will be covered under the Act. Where the disability results from an emotional reaction to regular or specially assigned work duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand the disability is not compensable where it results from such factors as an employee's fear of a reduction-in-force, his frustration from not being permitted to work in a particular environment or to hold a particular position, or his failure to secure a promotion. Disabling conditions resulting from an employee's feeling of job insecurity or the desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.³ When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.⁴ In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to his assigned duties.

Appellant's allegations of employment factors that caused or contributed to his condition fall into the category of administrative or personnel actions. These actions included discussion of appellant's tardiness, his supervisor's difficulty in locating him and the need for him to report his whereabouts and the need for him to coordinate the use of government vehicles with other technicians. In *Thomas D. McEuen*,⁵ the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant.⁶ Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.⁷ Appellant has presented no evidence of administrative supervisory error or abuse in the performance of this action, and therefore it is not compensable now under the Act.

Appellant alleges that the fact of the telephone discussion in the workplace caused his emotional reaction symptomatology. It is well established that verbal altercations or abuse in the

³ *Lillian Cutler*, 28 ECAB 125 (1976).

⁴ *Artice Dotson*, 41 ECAB 754 (1990); *Buck Green*, 37 ECAB 374 (1985); *Peter Sammarco*, 35 ECAB 631 (1984).

⁵ 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁶ *See Richard J. Dube*, 42 ECAB 916 (1991).

⁷ *Thomas D. McEuen*, *supra* note 5.

workplace may constitute a compensable factor of employment. This does not imply, however, that every statement uttered in the workplace will give rise to coverage under the Act.⁸ A mere workplace argument, without assault, verbal abuse, derogatory epithets, or threats of physical violence, is generally not enough to constitute a compensable factor of employment for compensation purposes.⁹ In the context of disputes or difficult relationships alleged between coworkers, mere perceptions or generally stated assertions of dissatisfaction with coemployees or with supervisors will not support a claim for an emotional disability. In this case, there was no confrontation whatsoever, but merely a telephone discussion which could not put appellant in imminent fear of his safety. Further, statements by his supervisor supported that the conversation was calm and rational, that it was appellant who became upset unilaterally and that the conversation was terminated when appellant became irate. Therefore, the nature of this telephone confrontation was remote and nonthreatening to appellant and hence is not compensable under the Act.

When working conditions are alleged as factors in causing disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.¹⁰ When a claimant fails to implicate a compensable factor of employment, such as in this case, the Office should make a specific finding in that regard. If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.¹¹ When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, then the Office must base its decision on an analysis of the medical evidence of record.¹² However, in this case, appellant has failed to implicate any compensable factor of employment in causing his emotional reaction, such that he has not established that he developed an emotional condition while in the performance of duty and the medical evidence submitted need not be considered.

Therefore, the Office properly denied appellant's claim as he failed to establish that he developed an emotional condition in the performance of duty as alleged.

With his request for reconsideration appellant failed to make new arguments regarding the facts of the case and merely repeated statements made and considered and he submitted further medical evidence addressing his October 27, 1995 automobile accident, which need not

⁸ *Leroy Thomas, III*, 46 ECAB 946 (1995); *Mary A. Sisneros*, 46 ECAB 155 (1994).

⁹ See generally, *Leroy Thomas, III*, *supra* note 10; *Gregory N. Waite*, 46 ECAB 662 (1995); *Abe E. Scott*, 45 ECAB 164 (1993).

¹⁰ See *Barbara Bush*, 38 ECAB 710 (1987).

¹¹ *Ruthie M. Evans*, 41 ECAB 416 (1990).

¹² See *Gregory J. Meisenberg*, 44 ECAB 527 (1993).

be considered. Consequently, the Office properly denied appellant's request for a further review of this case on its merits.

Accordingly, the decisions of the Office of Workers' Compensation Programs dated February 16, 1996 and December 28, 1995 are hereby affirmed.

Dated, Washington, D.C.
March 26, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member